

§ 1940.971

103-354 office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§ 1940.970 [Reserved]

§ 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§ 1940.972—1940.999 [Reserved]

§ 1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575-0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1941—OPERATING LOANS

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Subpart A—Operating Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35684, Sept. 14, 1988, unless otherwise notes.

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent direct Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and farm co-operatives, private domestic corporation, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4-H, Future Farmers of America, and similar organizations. It is the policy of Farm Service Agency (FSA) or its successor agency under Public Law 103-354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency or its successor agency under Public Law 103-354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency or its successor agency under Public Law 103-354 employee. See exhibit A of subpart A of part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. Agency or its successor agency under Public Law 103-354 forms are available in any Agency or its successor agency under Public Law 103-354 office.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 226, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996]

§ 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA or its successor agency under Public Law 103-354 assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4-H clubs, Future Farmers of America, and similar organizations.

§ 1941.3 Management assistance.

As provided in subpart B of part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Additional security. Any security beyond that which is required to adequately secure the loan.

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA or its successor agency under Public Law 103-354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for OL loan assistance in accordance with § 1941.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103-354 regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the

applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are eligible beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of this subpart and § 1980.175(d)(1) of subpart B of part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term *farm* also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts, except as provided in §1941.14 of this subpart, for annual production loans or subordinations made to delinquent borrowers; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower of farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Financially viable operation. A financially viable operation is one which, with FmHA or its successor agency under Public Law 103-354 assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA or its successor agency under Public Law 103-354 direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable non-farm income, provide for replacement of capital items, and provide for long-term financial growth. A borrower that will meet the FmHA or its successor agency under Public Law 103-354 classification of "Commercial," as defined in FmHA Instruction 2006-W (available in any FmHA or its successor agency under Public Law 103-354 office), will be considered to be financially viable.

Fish. Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a

loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or combination of individuals owning more than a 50 percent interest in a co-operative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Primary security. Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with "basic security," as defined in §1962.4 of subpart A of part 1962 of this chapter.

Recreation enterprise. An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4-H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term "security."

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 26680, May 5, 1993; 58 FR 48283, Sept. 15, 1993; 61 FR 35925, July 9, 1996]

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§§ 1941.7-1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of this subpart and is available in any FmHA or its successor

agency under Public Law 103-354 office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable

prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(5) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see §1941.4 of this subpart.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see §1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of the INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(iv) They and the entity itself will honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is

not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own *or* operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and

(iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

(c) *Borrower training.* Except for applicants for youth loans, all applicants must agree to meet the training requirements of § 1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator hold-

ing a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 56 FR 3971, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993]

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4-H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

§ 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility criteria in § 1941.12 of this subpart, and whose accounts have not been accelerated by FmHA or its successor agency under Public Law 103-354, and who cannot be assisted

after considering consolidation, re-scheduling and/or reamortizing at regular interest rates and consolidation, re-scheduling and/or reamortizing at limited resource rates and deferral of principal and interest payments, including distressed Farmer Program loans for softwood timber production in applicable areas, all in accordance with subpart S of part 1951 of this chapter, will automatically be considered for annual production loans under this section or subordinations under subpart A of part 1962 and subpart A of part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA or its successor agency under Public Law 103-354.

(2) The borrower has been unable to pay accounts as scheduled. The following are examples, but eligibility is not limited to these examples:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or under employment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management practices spelled out in Table C of Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security,

and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplied credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Nondisturbance agreements will be obtained from other creditors, as necessary.

(7) If FmHA or its successor agency under Public Law 103-354 has completed the process of considering the borrower for debt restructuring, pursuant to subpart S of part 1951 of this chapter, and the borrower has received the benefits of conservation easement or debt write-down, bringing the account current, the borrower may be considered for an annual production loan or subordination in the future, if the account again becomes delinquent due to circumstances beyond the borrower's control. Those borrowers for whom FmHA or its successor agency under Public Law 103-354 has completed the process of consideration for debt restructuring (including any administrative appeal and further review), who are determined not eligible for conservation easement or debt write-down benefits, and whose accounts have been accelerated, will not be eligible for assistance under this section. If FmHA or its successor agency under Public Law 103-354 has not completed the process (including any administrative appeal and further review) of considering the borrower for debt restructuring, the borrower may be considered for assistance under this section.

(8) The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624), dated November 28, 1990, requires FmHA or its successor agency under Public Law 103-354 to revise its notices on loan service programs for delinquent borrowers to include additional

servicing options and extend various timeframes. Therefore, all delinquent borrowers who cannot be considered for all servicing options until FmHA or its successor agency under Public Law 103-354 implements these provisions of the Act, will be considered for an annual production loan or a subordination under this section.

(b) Loan funds will be used to pay essential annual operating and family living expenses only, as defined in § 1962.17 of subpart A of part 1962 of this chapter.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA or its successor agency under Public Law 103-354 1941-1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941-A-1, "Advice to Borrower of Financial Condition," of their serious financial condition; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA or its successor agency under Public Law 103-354 is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA or its successor agency under Public Law 103-354 will consider assistance for another year to continue their operations. The County Supervisor will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941-A-1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy

will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 11366, Mar. 20, 1989; 55 FR 21527, May 25, 1990; 56 FR 6796, Feb. 20, 1991; 58 FR 48284, Sept. 15, 1993; 58 FR 69199, Dec. 30, 1993]

§ 1941.15 Special beginning farmer or rancher OL loan assistance.

(a) *Objectives.* The basic objective of this special OL loan program is to provide the applicant, whose primary occupation is or will be farming, with a reliable source of operating credit for annual operating and capital expenses needed to conduct a financially viable farming or ranching operation. Supervision will be provided to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements for special beginning farmer or rancher OL loan assistance.* Applicants must:

(1) Meet the "beginning farmer or rancher" definition in § 1941.4 of this subpart, and

(2) Have not operated a farm or ranch, or have operated a farm or ranch for not more than 5 years. This requirement applies to all members of an entity.

(3) During the 5-year period prior to applying for assistance, have sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation.

(4) Own, lease, or have a commitment to lease the site of the operation, that is or will be sufficient to carry out the planned operation.

(5) Present a plan of operation in accordance with paragraph (e) of this section, which projects feasibility for each year of the 5-year period, and a financial projection reflecting a financially viable operation at the end of the commitment period referenced in paragraph (f) of this section.

(6) Have or will have access to livestock and equipment, sufficient to carry out the planned operation.

(c) *Loan purposes.* Loan purposes are as set forth in § 1941.16 of this subpart. Applicants approved for loan assistance

under this section will also receive priority in the purchase of Agency inventory equipment as stated in § 1955.122(a) of subpart C of part 1955 of this chapter.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1941.17 of this subpart, the following limitations apply:

(1) The borrower shall not be eligible to receive additional special direct OL loan assistance during the commitment period referenced in paragraph (f) of this section after 8 years from the date of receiving the first such loan. This does not prohibit the borrower from receiving an additional 2 years of OL loan assistance under the regular direct OL loan program during the commitment period.

(2) The borrower is not eligible for special beginning farmer OL loan assistance for a 3-year period beginning on the date that a previous commitment is terminated under paragraph (h) of this section.

(e) *Plan of operation for special beginning farmer OL loan assistance.* In addition to the planning requirements set forth in § 1924.56 of subpart B of part 1924 of this chapter and subject to paragraph (e)(3) of this section, the following information must be submitted to the County Supervisor with the application:

(1) A first-year plan of the farming operation from the applicant providing the following details:

(i) How the operation is to be conducted.

(ii) The types and quantities of commodities to be produced.

(iii) The production methods to be employed by the operator.

(iv) The conservation measures to be utilized in the operation.

(v) The livestock and equipment needed to conduct the farming operation (including expected replacements or additions), and whether the applicant owns, leases, or has access to the item(s), or plans to purchase or lease the needed item(s).

(vi) The expected income and expenses of the operation.

(vii) The expected credit needs, including the types, amounts and sources.

(viii) The site or sites where the farming operation is, or will be, located.

(2) Upon receipt of the plan from the applicant, including any future planned purchases and changes to the operation, the County Supervisor will develop a 5-year plan by use of an automated analysis, described in § 1910.4 (b) of subpart A of part 1910 of this chapter, and a projection of the financial status of the farming operation after special beginning farmer OL loan assistance (direct/guaranteed OL) has been provided for the period necessary, not to exceed 10 years. The projected plan must indicate the operation will be financially viable without further Agency assistance within 10 years. This plan will detail the specific goals addressed by the applicant in order to graduate to other credit in an expeditious manner. Failure to meet these goals may result in termination of the commitment under paragraph (h) of this section.

(3) An applicant has the option to develop the 5-year plan and financial projection without the use of the Agency's automated Farm and Home Plan system. The County Supervisor will notify the applicant of this option. For each year of the 5-year plan, the items listed under paragraph (e)(1) of this section must be provided. The financial projection must conform with the requirements set out in paragraph (e)(2) of this section.

(f) *Commitment period.* In making OL loans under this section, the County Supervisor will make a commitment to the borrower to provide direct and guaranteed operating credit for a period not to exceed 10 years, subject to loan limitations stated in paragraph (d) of this section. FmHA Form Letter 1941-A-2, "Conditional Commitment to Provide Special Operating Loan Assistance to Beginning Farmers or Ranchers," will be used for this purpose, and provided to the applicant when the loan is approved. The following conditions apply:

(1) The length of the commitment period will be determined by an automated analysis of projected financial and income data reflecting a financially viable operation as defined in § 1941.4 of this subpart.

(2) After the first year, subsequent loans under this section are contingent on the revision of the projected plan of operation required in paragraph (e)(1) of this section. The plan will be for the 5-year period beginning with the particular year for which assistance is requested, or if shorter, the period beginning with the particular year for which assistance is requested and ending with the year the plan projects a financially viable operation. A revised plan will be developed each year. This must be based on an analysis of the prior year's operation. The plan must be revised at least 60 days before the assistance will be needed for that particular year. The type of assistance provided each year (direct OL-Limited Resource, direct OL, guaranteed OL-Interest Assistance, or guaranteed OL) will depend upon the financial progress made by the loan applicant in accordance with the eligibility requirements for each of the listed types of assistance.

(3) Borrowers under this section must demonstrate progress toward the specified goals with the objective of eliminating the need for Agency credit after not more than 10 years. A borrower will be considered to have met the goals if Agency payments are made on a timely basis, agreements Agency are kept, and financial progress is made such that the operation continues to be financially viable.

(g) *Extension of commitment period.* If a commitment has been issued for less than 10 years, the commitment period may be extended subject to the 10-year limit providing:

(1) The annual plan is revised in accordance with paragraph (f)(2) of this section;

(2) The failure to achieve the goals within the commitment period was due to circumstances beyond the control of the borrower. Acceptable new document circumstances for not achieving the goals include, but are not limited to:

(i) The reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control.

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm.

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made.

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that scheduled payments cannot be made, and;

(3) The failure to achieve such goals has not materially reduced the likelihood of the farming operation becoming financially viable.

(h) *Termination of commitment period.*

(1) The commitment will be revoked if the Agency fails to recertify the applicant as eligible for the regular direct and/or guaranteed OL loan programs under paragraph (k)(2) of this section.

(2) The commitment for operating credit also shall be revoked if the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless both of the following are met:

(i) The failure has not materially reduced the likelihood of the operation becoming financially viable. (An updated projection of the financial status of the operation still reflects financial viability at the end of the commitment period.)

(ii) The failure to meet the goals of the 5-year plan was due to circumstances beyond the control of the borrower as described in paragraph (g)(2) of this section.

(3) Upon revocation of the commitment, the borrower will be given appeal rights in accordance with 7 CFR part 780.

(i) *Relationship between Agency loans, direct and guaranteed.* The provisions of § 1941.29 of this subpart apply as stated. When a commitment is made to an applicant for 8 or more years, and no guaranteed special OLs are made, all direct operating loans are to be special operating loans for the first 8 years. OL loans made in the 9th and/or 10th years will be regular direct operating loans.

With respect to loan objectives as stated in paragraph (a) of this section, and in accordance with paragraph (f)(2) of this section, whether the borrower receives a direct or guaranteed OL loan during the commitment period will depend on the borrower's financial condition, the projected 5-year plan of operation, and the availability of credit.

(j) *Completion of the 10-year commitment period.* If the borrower is unable to graduate to other credit without the Agency's assistance, Agency may provide direct or guaranteed loan assistance subject to the lifetime loan limitations set forth in § 1941.17 of this subpart and § 1980.175 (d) of subpart B of part 1980 of this chapter and all other loan making regulations of this chapter.

(k) *Agency certification.* A special beginning farmer OL application will only be considered after the applicant submits a complete 5-year plan of operation and a projection of the financial status of the operation as set forth in paragraph (e) of this section. In addition to the requirements of § 1941.30, the following conditions apply:

(1) Agency certifications of eligibility under paragraph (b) of this section are effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the Agency will certify as to the applicant meeting the eligibility requirements for the regular direct or guaranteed OL loan programs, as appropriate. Such certification is unnecessary if a 5-year eligibility certification has not yet expired unless the County Supervisor has determined that the applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan will be made under the commitment and the commitment will be revoked in accordance with paragraph (h) of this section.

(l) *Loan approval or disapproval.* In addition to the requirements of § 1941.33 of this subpart, it must be determined that:

(1) *Initial loans.* (i) The plan of operation reflects that farm income is sufficient to cover farm operating expenses, replacement of capital items, debt service, and that part of living ex-

penses not covered by nonfarm income (if any) for each year. Nonfarm income cannot be relied on to cover farm expenses or debt service.

(ii) At the end of the commitment period the operation will project financial viability without further assistance from FmHA or its successor agency under Public Law 103-354, and the identified goals are reasonable and practicable.

(2) *Subsequent loans.* Subsequent loans will be approved or disapproved in accordance with FmHA Form Letter 1941-A-2 and paragraph (f) of this section.

[58 FR 48284, Sept. 15, 1993, as amended at 61 FR 35925, July 9, 1996]

§ 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or \$5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA or its successor agency under Public Law 103-354 debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than \$15,000 in a fiscal year for real estate improvements or repairs. The following determinations

must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the FSA Farm Programs (formerly Agricultural Stabilization and Conservation Service), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricultural commodity or as pasture.

[53 FR 35684, Sept. 14, 1988, as amended at 61 FR 35925, July 9, 1996]

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the applicant:

(1) Received direct OL loans after October 28, 1992, and the sum of all calendar years those direct OL loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 10. The borrower, however, could still receive as-

sistance in the following Example: A borrower received a 1-year, direct OL on February 1, 1993, and repaid it on December 15, 1993. The borrower does not apply for any more direct OL loans until the year 1996. This borrower still has 9 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 10-year eligibility limit as long as the loan is closed within the 10-year time period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year will be counted as a full year. For example, had this borrower repaid the OL loan on January 2, 1994, only 8 years of eligibility would remain.

(2) Received direct and/or guaranteed OL loans after October 28, 1992, and the sum of all calendar years that any combination of those loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 15. The borrower, however, could still receive assistance in the following Example: On February 1, 1993, a borrower obtains the first of 8 consecutive direct annual OL loans. In year 9, the borrower obtains a 7-year guaranteed OL loan. A few months prior to the end of the 15th year of having OL loans/guarantees outstanding, the borrower applies for a 7-year direct OL loan. This borrower is eligible providing the loan can be closed within the 15th year of eligibility. The repayment term on the loan may extend beyond the 15-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(3) As of October 28, 1992, had one or more direct OL loans outstanding during each of the last 5 calendar years (January 1, 1988–October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through loan servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had one direct OL loan outstanding on October 28, 1992, and had one direct OL loan outstanding

every year since June 10, 1988 (the borrower received an annual OL loan every year between 1988 and 1992. Each year the loan was paid off in November). The borrower received a 3-year direct OL loan on January 28, 1993 (after October 28, 1992) and repaid the loan on December 31, 1995. The borrower does not apply for any more direct or guaranteed OL loans until 1997. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(4) As of October 28, 1992, had one or more guaranteed OL loans outstanding during each of the last 10 calendar years, (January 1, 1983–October 28, 1992), and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had a guaranteed OL loan outstanding as of October 28, 1992, which had been outstanding for 7 calendar years. The borrower had a guaranteed OL loan prior to this one, also for 7 calendar years. (There were no overlapping years of assistance.) The borrower obtained a 3-year guaranteed OL loan on February 11, 1993 (after October 28, 1992). The loan was paid off on February 11, 1996. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(b) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant will exceed \$200,000 at loan closing.

(c) If the total outstanding youth loan principal balance will exceed \$5,000 at loan closing.

(d) For the purchase of real estate, making principal payments on real es-

tate, or refinancing of any debts incurred for the purchase of real estate.

(e) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter. Refer to subpart LL of part 2000 of this chapter, "Memorandum of Understanding Between FmHA or its successor agency under Public Law 103-354 and the U.S. Fish and Wildlife Service," for assistance in implementation.

(f) For special beginning farmer or rancher OL loan assistance loan limitations, see § 1941.15 (d) of this subpart.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 48286, Sept. 15, 1993]

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by the Agency or its successor agency under Public Law 103-354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of the Agency Instruction 440.1 (available in the Agency or its successor agency under Public Law 103-354 office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.55 of subpart B of part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in

increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See §1951.25 of subpart A of part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note. The first installment must be scheduled for payment within 18 months of loan closing.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months, but no later than 18 months, from the date the loan is closed when marketing plans extend beyond 12 months. When an OL loan for annual production purposes is scheduled for repayment in one installment, the installment must fall due no later than 18 months from the date of loan closing. Individual marketing circumstance may warrant repayment schedules which are longer than 18 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be

adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 57 FR 18676, Apr. 30, 1992; 57 FR 37400, Aug. 19, 1992; 61 FR 35925, July 9, 1996]

§ 1941.19 Security.

Primary security must be available for the loan. Any additional security available up to and including 150 percent of the loan amount also will be taken. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., same type of livestock (dairy cows, brood sows). In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Chattels.* (1) The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds.

(2) If the security for the loan under paragraph (a)(1) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, if available, up to the point that security for the loan at least equals 150 percent of the loan amount.

(i) When there are several alternatives available (cattle, machinery),

any one of which will meet the security requirements of this section, the approval official generally has the discretion to select the best alternative for obtaining security.

(ii) When alternatives exist and the applicant has a preference as to the property to be taken for security, however, the approval official will honor the preference so long as the requirements of paragraphs (a)(1) and (2) of this section are met.

(3) To comply with the 150 percent requirement, security values will be established as follows:

(i) For the purposes of loan making only, the security value of the crop and/or livestock production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses listed on Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other acceptable plan of operation.

(ii) The specific livestock and/or equipment to be taken as security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with § 1941.25 of this subpart.

(b) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral. Real estate taken as security, along with its value established in accordance with § 1941.25 of this subpart, will be documented in the case file. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements.

(1) Security may also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(2) Advice on obtaining security will be received from OGC when necessary.

(c) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property when it will prevent the applicant, or members of an entity applicant, from obtaining operating credit from other sources.

(2) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract(s) being used for collateral, in addition to any crops or chattels, meet the security requirement of at least equal to 150 percent of the loan.

(5) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(6) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(7) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(d) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(e) *Insurance.* See § 1941.88 of subpart B of this part for insurance requirements.

(f) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to the Agency for any other farm credit programs direct or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67480, Dec. 31, 1991; 57 FR 18676, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25799, May 18, 1994; 61 FR 35925, July 9, 1996]

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of part 1940 of

this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and non-discrimination requirements. In accordance with title V of Pub. Law 93–495, the Equal Credit Opportunity Act, FmHA or its successor agency under Public Law 103–354 will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of subpart F of part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA or its successor agency under Public Law 103–354 employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA or its successor agency under Public Law 103–354.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Except as provided in paragraph (a)(5) of this section, real estate appraisals will be completed by an FmHA or its successor agency under Public Law 103-354 employee, or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on Forms FmHA 440-21, "Appraisal of Chattel Property," FmHA 1922-1, "Appraisal Report—Farm Tract," and FmHA 1922-11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

(1) When an initial loan is made, a chattel appraisal is required on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified.

(2) When a subsequent loan is made, a chattel appraisal is required when:

(i) Refinancing chattel debt.

(ii) The existing chattel appraisal is more than 2 years old.

(3) A real estate appraisal is not required when real estate is taken as additional security, as defined in §1941.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in §1941.4 of this subpart.

(5) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and Sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (a) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(6) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new ap-

praisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(b) *Real estate appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA or its successor agency under Public Law 103-354's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must be State-certified general.

[53 FR 35684, Sept. 14, 1988, as amended at 57 FR 18676, Apr. 30, 1992; 58 FR 26680, May 5, 1993; 58 FR 48286, Sept. 15, 1993; 59 FR 16772, Apr. 8, 1994; 59 FR 25800, May 18, 1994]

§§ 1941.26—1941.28 [Reserved]

§ 1941.29 Relationship between FmHA or its successor agency under Public Law 103-354 loans, direct and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A direct OL loan may be made to a guaranteed loan borrower provided:

(1) The outstanding direct and guaranteed OL principal balance owed by the loan applicant does not exceed \$400,000 at loan closing.

(2) The outstanding combined direct and guaranteed OL principal balance owed by the loan applicant, or owed by anyone who will sign the note as co-signer evidencing personal liability, will not exceed the authorized guaranteed OL loan limit providing the portion representing the direct OL indebtedness does not exceed the direct loan limit. The deciding factors are the type of entity and the personal liability of the entity members. Individuals, who are members or stockholders of a cooperative or corporation that is indebted for a \$200,000 direct and \$200,000 guaranteed OL loan, can each borrow a \$200,000 direct and \$200,000 guaranteed OL loan, or any combination of direct or guaranteed OL loan funds that does

not cause them to exceed the individual direct or guaranteed OL loan limits, provided they conduct separate farming operations as individuals and they have not signed as individuals giving personal liability for the entity OL debt. Likewise, such entities whose members or stockholders are individually indebted for the maximum direct or guaranteed OL loan limit, may borrow the maximum direct or guaranteed OL loan limits, providing none of the members or stockholders are required to pledge personal liability for the entity debt. Partners or joint operators of a partnership or joint operation, which is indebted for a \$200,000 direct and a \$200,000 guaranteed OL loan, cannot borrow additional OL funds as individuals in a separate operation because they are each personally liable for the total entity debt. Likewise, such entities, consisting of individuals who are indebted for the maximum direct or guaranteed OL loan limits, are not eligible for OL loan assistance.

(3) Chattel and/or real estate security must be separate and identifiable from the security pledge to FmHA or its successor agency under Public Law 103-354 for a guaranteed loan. Different lien positions on real estate are considered separate and identifiable security.

(c) An direct OL loan may be made to refinance a guaranteed OL loan when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the direct OL loan is closed.

(d) New applicants and borrowers indebted to FmHA or its successor agency under Public Law 103-354 and/or an FmHA or its successor agency under Public Law 103-354 guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA or its successor agency under Public Law 103-354 and/or the FmHA or its successor agency under Public Law 103-354 guaranteed lender(s) for the EE

loan and any FO, SW, RL, and/or OL loans will not exceed \$650,000.

[53 FR 36240, Sept. 19, 1988, as amended at 55 FR 21527, May 25, 1990; 58 FR 44747, Aug. 25, 1993]

§§ 1941.30-1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See exhibit A of this subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter, provided the total direct operating loan principal balance at loan closing does not exceed \$200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The Agency has certified the applicant eligible,

(ii) Funds are requested for authorized purposes,

(iii) The proposed loan is based on a feasible plan, or meets the requirements set forth in § 1941.14(a)(5) of this chapter for annual production loans to delinquent borrowers. Planning forms other than Form FmHA or its successor agency under Public Law 103-354 431-2 may be used when they provide all the necessary information.

(iv) The security is adequate,

(v) Necessary supervision is planned, and

(vi) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds," any conditions required by Agency or its successor agency under Public Law 103-354 regulations that must be met for loan closing;

- (ii) Specify all security requirements;
- (iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;
- (iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained; and

(v) Send a signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in §1910.4 of subpart A of part 1910 of this chapter. The following actions will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA or its successor agency under Public Law 103-354 1940-1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapprovals should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken, and include any suggestions that could result in favorable action. When denial of an OL loan to a delinquent farmer program borrower is involved, the County Supervisor must clearly explain why the borrower is not eligible for the OL loan and why the borrower is not eligible for an annual production loan as outlined in §1941.14 of this chapter. The applicant will be notified, in writing, of the opportunity to appeal.

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

[53 FR 35664, Sept. 14, 1988, as amended at 54 FR 11366, Mar. 20, 1989; 57 FR 18676, Apr. 30, 1992; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996]

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that

the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the County Office computer terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be canceled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office).

(c) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103-354 1940-10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103-354 440-57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or

RHS, RBS, RUS, FSA, USDA

decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994]

§§ 1941.36–1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with subpart B of part 1941 of this chapter.

§§ 1941.39–1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with subpart A of part 1962 of this chapter and/or subpart S of part 1951 of this chapter.

§§ 1941.43–1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBITS TO SUBPART A

**EXHIBIT A—PROCESSING GUIDE—
INSURED OPERATING LOANS**

This Exhibit outlines the basic steps involved in processing a loan application and identifies the FmHA or its successor agency under Public Law 103-354 forms which should be considered for use at each step.

Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural references for each form.

APPLICATION PROCESSING

A. APPLICANT INTERVIEW

Review applicant's proposed plan of operation in view of authorized loan purposes and limitations on loans.

Begin running case record.

Provide applicant with FmHA or its successor agency under Public Law 103-354 forms to be completed and returned which are needed to determine eligibility. Be sure applicant understands the purposes of the forms and knows who must complete them.

Advise applicant of other information that must be given to FmHA or its successor agency under Public Law 103-354.

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When appropriate, have applicant contact other creditors as possible credit sources for financing, or participating in the financing, of the proposed operation.

The following FmHA or its successor agency under Public Law 103-354 forms will be made available to the applicant or will be used by the County Supervisor. Forms designated with an "x" are always required and those designated with an "*" are to be used when appropriate.

Form No	Name	
410-1	Application for FHA Services	(x)
1910-5	Request for Verification of Employment.	(*)
410-9	Statement Required by the Privacy Act.	(*)
410-10	Privacy Act Statement to References	(*)
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	(x)
431-1	Long-Time Farm and Home Plan	(*)
431-2	Farm and Home Plan	(x)
431-4	Business Analysis—Nonagricultural Enterprise.	(*)
440-32	Request for Statement of Debts and Collateral.	(*)
1940-51	Crop-Share-Cash Farm Lease	(*)
1940-53	Cash Farm Lease	(*)
1940-55	Livestock-Share-Farm Lease	(*)
1940-56	Annual Supplement to Farm Lease	(*)

B. FIELD VISIT

Notify applicant of planned visit and its purpose.

Evaluate the resources available to the applicant and determine whether or not they adequately fulfill the requirements of the proposed plan of operation.

Obtain information needed to complete required appraisals (chattel and real estate).

Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

Determine security requirements and record in running case record.

The following FmHA or its successor agency under Public Law 103-354 forms will be used as appropriate:

Form No.	Name	
440-13	Report of lien search	*
440-21	Appraisal of chattel property	*
1922-1	Appraisal report-farm tract	*
1922-2	Supplemental report-irrigation, drainage, levee, and minerals.	*
1922-3	Map of property	*
1922-10	Appraiser's worksheet-farm tract	*
2006-9	Notice of visit or meeting	*

C. ELIGIBILITY DETERMINATION

Obtain all needed application forms, and other information from the applicant; assist

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the applicant in completing these forms and in obtaining needed information, as necessary.

Request copy of deed or other evidence of title, when needed.

Schedule meeting with county committee, review application and determine eligibility.

Inform applicant of the results of committee action.

The following FmHA or its successor agency under Public Law 103-354 forms will be used as appropriate in accomplishing the above actions:

Form No.	Name	
403-1	Debt Adjustment Agreement	(*)
440-2	County Committee Certification or Recommendation.	(x)

DOCKET PREPARATION

Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

Check to make sure all security requirements have been met or will be met by loan closing.

Prepare a loan narrative, for running record.

The following FmHA or its successor agency under Public Law 103-354 forms will be completed and utilized as necessary in preparing the loan docket for approval:

Form No.	Name	
400-4	Assurance Agreement	(*)
1927-8	Agreement with Prior Lienholder	(*)
1940-1	Request for Obligation of Funds	(*)
440-4	Security Agreement (Chattels and Crops).	(*)
440-9	Supplementary Payment Agreement	(*)
1940-20	Request For Environmental Information.	(*)
440-25/ 440A25.	Financing Statement	(*)
440-26	Consent and Subordination Agreement.	(*)
1940-21, 1940-22, or Exhibit H, Subpart G of Part 1940.	Environmental Review	(*)
441-5	Subordination Agreement	(*)
441-8	Assignment of Proceeds from the Sale of Products.	(*)
441-10	Nondisturbance Agreement	(*)
441-12	Agreement for Disposition of Jointly Owned Property.	(*)
441-13	Division of Income and Nondisturbance Agreement.	(*)
441-17	Certification of Obligation to Landlord	(*)
441-18	Consent to Payment of Proceeds from Sale of Farm Products.	(*)
441-25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	(*)

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LOAN APPROVAL AND CLOSING

A. LOAN APPROVAL

File financing statement or chattel mortgage, and obtain a lien search.

Request preliminary title opinion when appropriate.

Record loan closing conditions in the running record.

Execute and distribute all forms necessary for loan approval.

B. LOAN CLOSING

Request needed legal services.

Arrange for loan closing by county office, escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

The following FmHA or its successor agency under Public Law 103-354 forms will be used by the County Office in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	
400-6	Compliance Statement	(*)
402-1	Deposit Agreement	(*)
402-2	Statement of Deposits and Withdrawals.	(*)
427-1 (State)	Real Estate Mortgage or Deed of Trust for	(*)
1927-9	Preliminary Title Opinion	(*)
1940-17	Promissory Note	(x)

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[43 FR 55883, Nov. 29, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting exhibit A of subpart A to part 1941, see the List of Sections Affected in the Finding Aids section of this volume.

EXHIBIT B [RESERVED]

EXHIBIT C—CONTROLLED SUBSTANCE

(NOTE.—Exhibit C referenced in this subpart is available in any FmHA or its successor agency under Public Law 103-354 office.)

[53 FR 35684, Sept. 14, 1988]

Subpart B—Closing Loans Secured by Chattels

§ 1941.51 Purpose.

This subpart prescribes Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 policies, procedures, and authorizations for closing direct loans secured

by chattels. These loans are considered closed on the date the promissory note is executed.

[43 FR 55883, Nov. 29, 1978, as amended at 58 FR 48282, Sept. 15, 1993]

§§ 1941.52–1941.53 [Reserved]

§ 1941.54 Promissory note.

(a) *Executing the note.* Form FmHA or its successor agency under Public Law 103–354 1940–17, “Promissory Note,” will be executed and dated following receipt of the loan check in the county office and prior to the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(b) *Signatures—(1) Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103–354 is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as individuals.

[43 FR 55883, Nov. 29, 1978, as amended at 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988; 58 FR 48286, Sept. 15, 1993]

§§ 1941.55–1941.56 [Reserved]

§ 1941.57 Security instruments.

Security instruments referred to in this Subpart are financing statements, security agreements, chattel mortgages, and similar lien instruments. To obtain a security interest in chattels and crops in States which have adopted the Uniform Commercial Code (UCC), both a financing statement and a security agreement are required, although only the financing statement must be filed or recorded in public records. See paragraph (g) of this section for filing or recording instructions. In Louisiana a Chattel Mortgage and Crop Pledge or Crop Pledge, as appropriate, is required to obtain a security interest in chattels and crops.

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien(s), security instruments will be executed by:

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

(2) Appropriate partners or joint operators on behalf of a partnership or joint operation; and the instruments will also be executed by all partners, or all joint operators, who will sign as individuals.

(b) *Undivided interests.* An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property will secure the loan with a lien on the undivided interest in the property. All individuals having an undivided interest in the security will execute Form FmHA or its successor agency under Public Law 103–354 441–12, “Agreement for Disposition of Jointly-Owned Property”, unless a written agreement to the same effect as this form has already been signed.

(c) *Security instrument forms.* (1) Form FmHA or its successor agency under

Public Law 103-354 440-25, "Financing Statement," or Form FmHA or its successor agency under Public Law 103-354 440A-25, "Financing Statement (Carbon-Interleaved)"; and Form FmHA or its successor agency under Public Law 103-354 440-4, "Security Agreement (Chattels and Crops)," will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

(2) Form FmHA or its successor agency under Public Law 103-354 440-4 LA, "Chattel Mortgage and Crop Pledge (Louisiana)," or Form FmHA or its successor agency under Public Law 103-354 440-4A LA, "Crop Pledge (Louisiana)," will be used in the State of Louisiana.

(3) Other forms will be used as provided in State supplements in Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

(d) *Taking security instruments*—(1) *Financing statement*. A financing statement is effective for 5 years from the date of filing and as long thereafter as it is continued by filing a continuation statement.

(i) *Initial loan*. A financing statement will be required for every initial loan except when a filed financing statement covering the applicants property is still effective, covers all types of chattel property that will serve as security for the initial loan, and describes the land on which crops and fixtures are or will be located.

(ii) *Subsequent loan*. A financing statement will not be required unless the filed financing statement is not effective, does not cover all types of chattel property that will serve as security for the subsequent loan, or does not describe the land on which crops or fixtures are or will be located. If the loan debt is being secured for the first time, however, the procedure for securing initial loans stated in paragraph (d)(1)(i) of this section will be followed.

(2) *Security Agreements*—(i) *Initial loan*. When an initial loan is made to an applicant, including to a paid-in-full borrower, a new security agreement will be required in all cases. The security agreement will be executed not later than the first withdrawal of loan

funds from the supervised bank account or delivery of the loan check to the borrower.

(ii) *Subsequent loan*. An additional security agreement will be required if property which is to serve as security for the debt is not described either specifically or in the printed form of the previous security agreement, or if an additional agreement it is needed to obtain or maintain a security interest in crops.

(A) An additional security agreement may also be executed to reflect significant changes in security.

(B) An additional security agreement is not necessary if the existing security agreement covers all types of chattels that will serve as security for the subsequent loan, describes the land on which the crops or fixtures are or will be located, and was executed within 1 year before the crops which are offered as security became growing crops.

When determined necessary by OGC, a State supplement will be issued to further explain when a security agreement covering crops will be required.

(e) *Describing collateral in security instruments*. (1) Financing statements describe certain types of collateral. If items of collateral not covered in the printed form of the financing statement are to serve as security, they should be described by type or specifically identified.

(2) Generally, animals, birds, fish, etc., should be described by groups in the security agreement. The serial or other identification numbers of major items of equipment should be listed in the security agreement. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment, or fixtures which cannot be readily described under the column headings of items 2 or 3 of Form FmHA or its successor agency under Public Law 103-354 440-4, an appropriate description of such property will be inserted in item 2 or 3 below the other property, without regard to the column headings.

(3) The advice of the Office of the General Counsel (OGC) will be obtained as to how to describe in financing statements and security agreements items such as grazing permits, milk

bases, and membership or stock in co-operative associations. The property to be described in security instruments should be reconciled with any existing security instruments and with Form FmHA or its successor agency under Public Law 103-354 462-1, "Record of the Disposition of Security Property."

(4) After the initial security agreement is executed, and after the borrower obtains all the property which FmHA or its successor agency under Public Law 103-354 wants specifically described, by item, in the security agreement, a new security agreement will be executed.

(f) *Executing security instruments by County Office employees.* The County Supervisor and any County Office employee authorized by the County Supervisor may execute on behalf of the Government any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, security agreements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits and acknowledgments.

(g) *Filing or recording security instruments.* (1) Ordinarily, in States which have adopted the UCC, financing statements may be delivered by hand or mailed to the filing officers for filing or recording when the loan is approved. However, when this is not practical, the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower. If crops or other property of the borrower are located or will be located in a State other than that of the borrower's residence, the County Office servicing the loan will contact the County Office in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded as required by State supplements.

(2) Security agreements will not be filed or recorded unless required by State supplements. Form FmHA or its successor agency under Public Law 103-354 440-4 LA or Form FmHA or its successor agency under Public Law 103-354

440-4A LA will be filed or recorded in Louisiana as provided by State supplements.

[43 FR 55883, Nov. 29, 1978, as amended at 50 FR 27415, July 3, 1985; 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988]

§§ 1941.58—1941.59 [Reserved]

§ 1941.60 Purchase money security interest.

A purchase money security interest will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the property or within 10 days thereafter, subject to the following limitations:

(a) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession or within 10 days. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles; however, FmHA or its successor agency under Public Law 103-354 will always require both a security agreement and a financing statement. A State supplement will be issued, if necessary to set out the procedure for obtaining a lien on a motor vehicle, motorboat, or any special type of security.

(b) *Farm equipment.* A purchase money security interest in farm equipment costing \$2,500 or less (other than fixtures or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA or its successor agency under Public Law 103-354, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later

than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must be described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures*. A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement".

(e) *Crops*. A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over an earlier perfected security interest, if the obligation underlying the earlier interest was due more than 6 months before the crops became growing crops.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.61—1941.62 [Reserved]

§ 1941.63 Lien search.

(a) *Required lien searches*. (1) A lien search will be obtained at a time that assures that the security instruments give the Government the required security, usually at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. Lien searches may be obtained after the financing statement is filed, but never after the delivery of the loan check or the first withdrawal of loan funds from the supervised bank account. Form FmHA or its successor agency under Public Law 103-354 440-13, "Report of

Lien Search," or other lien search forms will be used.

(2) Under the UCC, lien searches are necessary in making subsequent loans if an additional financing statement is required; *i.e.*, when crops or fixtures to be taken as security are or will be located on land not described in the existing financing statement, or when property not covered by the financing statement is to be taken as security for the loan.

(3) Lien searches also may be obtained in connection with processing applications when the County Supervisor determines such searches are necessary on an individual case basis.

(4) Although a lien search is not always required for youths who are minors (as defined in State supplements), the County Supervisor may determine that a search is necessary to assure the Government obtains the required security interest.

(b) *Responsibility for obtaining lien searches*. (1) Applicants should obtain and pay for lien searches. FmHA or its successor agency under Public Law 103-354 County Office employees may make lien searches (at no cost to the applicant) in exceptional cases, such as when no other person is available to provide such a service, or when experience has shown that using the service available would lead to an undue delay in closing the loan and the delay would cause undue hardship to the borrower.

(2) The State Director will issue a State supplement setting forth the requirements for lien searches, including the records to be searched and the periods to be covered.

(3) The applicant should be informed of County Clerks, local attorneys or other persons who will conduct lien searches at a reasonable cost. The applicant will select the lien searcher. The cost of a lien search can be paid from the proceeds of loan checks.

§§ 1941.64—1941.66 [Reserved]

§ 1941.67 Additional requirements for perfecting security interests.

If necessary because of provisions in State statutes, leases, land purchase contracts, or real estate mortgages commonly in use, State Directors will issue State supplements which tell how

to obtain a subordination agreement, certification of obligation to landlord, disclaimer, and consent and subordination agreement to perfect security interest.

(a) *Form FmHA or its successor agency under Public Law 103-354 441-5, "Subordination Agreement."* This form will be used if a subordination agreement is required by FmHA or its successor agency under Public Law 103-354 on crops, livestock, farm equipment, or other chattels. If Form FmHA or its successor agency under Public Law 103-354 441-5 is not legally sufficient, a form recommended by OGC will be used. The time to be covered by the subordination agreement generally will be equal to the repayment period of the loan or for the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(b) *Form FmHA or its successor agency under Public Law 103-354 441-17, "Certification of Obligation To Landlord."* This form may be used instead of obtaining a subordination agreement if:

(1) It appears that the applicant is not financially obligated to the landlord except for rent for the lease year and will not incur other obligations to the landlord during that year, and

(2) A State supplement authorizing the use of Form FmHA or its successor agency under Public Law 103-354 441-17 in such cases has been issued.

(c) *Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement."* Unless otherwise provided by a State supplement, this form rather than a severance agreement will be used in UCC States when a security interest is taken in property after it has become a fixture.

(1) If a debt on an item which has already become a fixture is being refinanced, consent and subordination agreements will be signed before releasing loan funds to the creditor. In all other cases in which a security interest is being taken on an item that already has become a fixture, consent and subordination agreements will be signed no later than the time of loan closing.

(2) Consent and subordination agreements will be taken only in those cases

in which the fixture is placed on the real estate before the financing statement and security agreement covering the fixture have been executed, or before the financing statement is filed, or before the request for obligation of funds is signed by the loan approving official.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.68—1941.70 [Reserved]

§ 1941.71 Fees.

The borrower will pay all fees for filing or recording financing statements, mortgages, or other legal instruments and will pay all notary and lien search fees incident to loan transactions. Payment will be made from personal funds or from the proceeds of the loan. Whenever FmHA or its successor agency under Public Law 103-354 employees accept cash to pay for filing or recording fees or for the cost of making a lien search, Form FmHA or its successor agency under Public Law 103-354 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA or its successor agency under Public Law 103-354 employees will make it clear to the borrower that any fee so accepted is not received by the Government as a payment on the borrower's debt, but is accepted only for paying the recording, filing, or lien search fees on behalf of the borrower.

§§ 1941.72—1941.74 [Reserved]

§ 1941.75 Retention and use of security agreements.

Original executed security agreements will not be altered or destroyed, and will remain in the case file when new security agreements are taken. Changes in security property will be noted *only* on the work copy. When an additional security agreement covering all collateral for the debt is taken, the work copy of the previous security agreement may be destroyed.

§§ 1941.76—1941.78 [Reserved]**§ 1941.79 Future advance and after-acquired property clauses.**

The future advance and after-acquired property clauses of security agreements will be considered valid in all respects in UCC States unless otherwise provided in a State supplement.

(a) *Future advance clause.* A properly prepared, executed, and filed or recorded FmHA or its successor agency under Public Law 103-354 financing statement and a properly prepared and executed FmHA or its successor agency under Public Law 103-354 security agreement give FmHA or its successor agency under Public Law 103-354 a security interest in the property described. This security interest covers future loans, advances, and expenditures, as well as any other FmHA or its successor agency under Public Law 103-354 debts evidenced by notes and any advances or expenditures for debts evidenced by such notes. However, when a borrower's indebtedness is paid in full, a new security agreement must be taken in all cases to secure an initial loan made following the payment in full.

(b) *After-acquired property clause.* After a security interest is acquired in certain property, any property (except fixtures) acquired which is of the same type as that described in the financing statement and security agreement will also serve as security for the debt. The after-acquired property clause in the security agreement will encumber crops grown on the land described in the security agreement and financing statement, provided the crops are planted or otherwise become growing crops within 1 year of the execution date of the security agreement, or within such other period as provided in a State supplement. FmHA or its successor agency under Public Law 103-354 after-acquired security interests take priority over other security interests perfected after the FmHA or its successor agency under Public Law 103-354 financing statement is filed, except as stated in § 1941.60.

(c) *State supplements.* A State supplement concerning future advance and after-acquired property clauses will set forth requirements for filing or record-

ing security instruments in that State. This will assist County Supervisors in other States who request such information in accordance with § 1941.57(g). A State supplement will also be issued when OGC determines that it is needed to reflect any amendments made to a State's UCC.

§§ 1941.80-1941.83 [Reserved]**§ 1941.84 Title clearance and closing requirements.**

(a) For loans over \$10,000, title clearance is required when real estate is taken as primary security.

(b) For loans of \$10,000 or less, and loans for which real estate is taken as primary security, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the estate security, a title search will be required.

(c) Title clearance is not required when real estate is taken as additional security, as defined in § 1941.4 of this subpart.

(d) When real estate is taken as primary security, as defined in § 1941.4 of this subpart, title clearance and loan closing requirements will be carried out in accordance with subpart B of part 1927 of this chapter.

(e) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA or its successor agency under Public Law 103-354 loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(f) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan (under

power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA or its successor agency under Public Law 103-354 advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(g) Each real estate lien will be taken on Form FmHA or its successor agency under Public Law 103-354 1927-1 (State), "Real Estate Mortgage or Deed of Trust for _____," unless a state supplement requires the use of another form.

(h) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the purchase contract holder must agree, in writing, that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or its successor agency under Public Law 103-354 or the lender.

(3) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owned, the applicant will make every effort to refinance the existing purchase contract.

(4) The purchase contract must not be subject to summary cancellation on default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(5) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on

the day the Government receives the written notice of the breach.

[51 FR 13448, Apr. 21, 1986, as amended at 56 FR 67480, Dec. 31, 1991; 58 FR 26680, May 5, 1993]

§§ 1941.85-1941.87 [Reserved]

§ 1941.88 Insurance.

Insurance for property, public liability, and crops should be obtained before loan or at the time of closing.

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA or its successor agency under Public Law 103-354 requires and "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA or its successor agency under Public Law 103-354 is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA or its successor agency under Public Law 103-354, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, but not withstanding the limits in §§ 1962.17 and 1962.29(b) of subpart A of part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real

§ 1941.92

property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. Property insurance coverage will not be required when real estate is taken as additional security, as defined in §1941.4 of this subpart. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

(d) *Public liability and property damage.* Borrowers, including youths, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(e) *Mortgage clause.* When insurance is required on property serving as security, Form FmHA or its successor agency under Public Law 103-354 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause in general use in the

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area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration or its successor agency under Public Law 103-354) as mortgagee or secured party.

[43 FR 55883, Nov. 29, 1978, as amended at 47 FR 33486, Aug. 3, 1982; 53 FR 35691, Sept. 14, 1988; 58 FR 26680, May 5, 1993]

§§ 1941.89-1941.91 [Reserved]

§ 1941.92 Check delivery.

The County Supervisor will receive and deliver loan checks. On receipt of a loan check, and after arrangements have been completed for loan closing, the applicant will be promptly notified on Form FmHA or its successor agency under Public Law 103-354 440-8, "Notice of Check Delivery." Loan funds will be disbursed in accordance with subpart A of part 1902 of this chapter.

[43 FR 55883, Nov. 29, 1978, as amended at 58 FR 26681, May 5, 1993]

§ 1941.93 [Reserved]

§ 1941.94 Supervised bank accounts.

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with subpart A of part 1902 of this chapter.

[53 FR 35692, Sept. 14, 1988]

§ 1941.95 [Reserved]

§ 1941.96 Changes in use of loan funds.

(a) *Approval of changes.* County Supervisors, or their delegates, are authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The change is consistent with authorities, policies and limitations for making loans, and

(2) The change will not adversely affect either the workings of an on-going operation or the Government's interest.

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note," will not be revised. When funds loaned for the purchase of capital goods are to be used

for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in subpart A of this part. Appropriate changes with respect to the repayments will be made in table K of Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," also on Form FmHA or its successor agency under Public Law 103-354 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

[43 FR 55883, Nov. 29, 1978, as amended at 45 FR 16166, Mar. 13, 1980; 53 FR 35692, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989]

PART 1942—ASSOCIATIONS

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